

IC 34-52-2

Chapter 2. Awarding Fees and Other Expenses in Actions Involving the State

IC 34-52-2-1

Applicability of chapter

Sec. 1. (a) Subject to any other statute governing reimbursement of fees and other expenses, this chapter applies to the reimbursement of the fees and other expenses incurred in preparing for or prosecuting:

- (1) a proceeding under IC 4-21.5-5 to judicially review a final order made by a state agency;
- (2) an appeal from a final determination made by the worker's compensation board;
- (3) an appeal of a final determination made by the department of state revenue; or
- (4) an appeal of a final determination made by the department of workforce development or the department of workforce development unemployment insurance review board.

(b) However, this chapter does not apply to an order or other determination:

- (1) under:
 - (A) IC 16-27-1;
 - (B) IC 16-28;
 - (C) IC 16-29-1;
 - (D) IC 16-30;
 - (E) IC 12-28-4; or
 - (F) IC 12-28-5;
- (2) by an agency described by IC 25-1-8-1; or
- (3) by the board of podiatric medicine.

As added by P.L.1-1998, SEC.48.

IC 34-52-2-2

Order for payment; findings

Sec. 2. In addition to any other compensation awarded in a civil action involving an agency as a party, the court having jurisdiction in the case may enter an order against the agency for the payment of the reasonable fees and other expenses of a party, if the court finds that:

- (1) the party files a written notice of the party's intent to seek reimbursement under this chapter (or IC 34-2-36 before its repeal) not later than thirty (30) days after the party files any pleading or other paper with the court;
- (2) the party obtained final judgment in its favor;
- (3) the party has obtained substantive relief that makes it probable that the party will prevail on the merits after remand of the case to the agency, if remand is necessary;
- (4) the party is:
 - (A) a commercial or business entity (including a sole proprietorship or a partnership) with fewer than fifty (50)

employees at the time of the:

(i) civil action; or

(ii) the agency action (as defined in IC 4-21.5-1-4) giving rise to the civil action;

but is not a subsidiary or affiliate of another entity that does not qualify as a small business under this clause; or

(B) an organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;

(5) to the extent that the fees and other expenses of the party are for attorney's fees or expert witness fees, the fees are based upon the number of actual hours of service performed multiplied by a reasonable fee for the service rendered not to exceed seventy-five dollars (\$75) per hour;

(6) the party filed a claim not later than thirty (30) days after a final judgment was rendered; and

(7) section 3 of this chapter does not apply.

As added by P.L.1-1998, SEC.48.

IC 34-52-2-3

Award unauthorized; grounds

Sec. 3. The court may not award fees or other expenses against an agency if:

(1) the agency's only involvement in the case resulted from the agency's role as an arbiter of the legal rights, duties, immunities, privileges, or other legal interests of two (2) or more other parties;

(2) the agency as a party had a reasonable basis for its position;

(3) the position of the agency as a party became unjustified as a result of an intervening change in applicable law; or

(4) the fees or other expenses claimed were incurred to reimburse salaries or attorney's fees paid by a political subdivision, a state, the United States government, or a foreign province or country.

As added by P.L.1-1998, SEC.48.

IC 34-52-2-4

Maximum amount; multiple parties

Sec. 4. A party may be awarded an amount under this chapter not exceeding ten thousand dollars (\$10,000). However, if more than three (3) parties in a case are eligible for an award under this chapter, the total award made to all parties in the case may not exceed thirty thousand dollars (\$30,000).

As added by P.L.1-1998, SEC.48.

IC 34-52-2-5

Payment from appropriations; warrant

Sec. 5. The agency against which an order is entered under this

chapter shall pay the award from any money appropriated to the agency. The court may order the auditor of state to draw a warrant upon the funds of the agency. The treasurer of state shall pay the warrant when any appropriated and unencumbered funds are available to the agency.

As added by P.L.1-1998, SEC.48.

IC 34-52-2-6

Report of agency

Sec. 6. (a) Each agency subject to an order to pay fees or expenses or that pays fees or other expenses under this chapter shall report annually in an electronic format under IC 5-14-6 to the general assembly the amount of fees and other expenses ordered or paid during the preceding fiscal year by that agency.

(b) In its report, the agency shall describe:

- (1) the number, nature, and amount of the awards;
- (2) the claims involved in the controversy; and
- (3) any other relevant information to aid the general assembly in evaluating the scope and impact of these awards.

As added by P.L.1-1998, SEC.48. Amended by P.L.28-2004, SEC.174.